

VOLUME NO. 36**Opinion No. 19**

STATE BOARD OF PARDONS — Powers, release on work furlough; STATE PRISON — Prisoners, release on work furlough; STATE PRISON — Work furlough, when application may be made; STATE PRISON — Work furlough, final authority in Department of Institutions; STATE PRISON — Work furlough, who is responsible for locating supervising agency. Sections 82A-804, 95-2220, 95-2221, Revised Codes of Montana, 1947.

- HELD:**
- 1. A prisoner may apply for participation in the work furlough program at any time but he is not eligible for release on work furlough until he has completed half of the time required for eligibility for parole.**
 - 2. The Board of Pardons has the authority to release prisoners on furlough.**
 - 3. The Department of Institutions has final authority to approve or disapprove applications of prisoners for release on work furlough.**
 - 4. The applicant is responsible for locating an agency which will supervise his release on work furlough.**

September 2, 1975

Dr. Robert H. Mattson
Director
Department of Institutions
1236 East Sixth Avenue
Helena, Montana 59601

Dear Doctor Mattson:

I am in receipt of your recent letter in which you request my opinion on the following questions:

1. When may a prisoner make application to participate in the furlough program under section 95-2220, Revised Codes of Montana 1947?

2. Does the Board of Pardons have the necessary authority to release prisoners on furlough?
3. Does the Department of Institutions have final authority on all matters pertaining to the furlough program including the authority to approve or disapprove applications to be released in the furlough program?
4. Is the Department or the applicant responsible for locating a supervising agency?

With emphasis on the plain meaning of the language used and giving effect to all relevant statutes I concur in your opinion that a prisoner may apply at any time for participation in the work furlough program, but he is not eligible for release until he has completed half of the time required for eligibility for parole.

I must disagree with your second conclusion, however, that the authority to release prisoners on the furlough program rests with the Warden of the state prison. Section 95-2221, R.C.M. 1947, states specifically that:

- (1) At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough plans, criminal history, and all other pertinent case material...

The clear meaning of that section is to require the board of pardons as provided for in section 82A-804, R.C.M. 1947, to consider all such applications and to either approve or deny each of them after careful consideration. No mention is made of the Warden's role in the process. Therefore, I conclude that he has no position at all, other than as a potential witness, in the decision to approve or deny the application.

I disagree also with your third conclusion. It is my opinion that the unambiguous meaning of section 95-2221(5) R.C.M. 1947, is that the Department of Institutions **may** review any and all decisions of the board in regard to work furlough applications without the necessity of a formal appeal. Such action would be discretionary on the part of the Department. The Department **must**, however, review all decisions of the board which fall within the circumstances described in section 95-2221(7) which states:

- If the application is denied the prisoner may reapply after six (6) months' time. After an applicant has been denied three (3) times he may appeal to the department for a hearing.

I concur in your final conclusion that subsection (2) of section 95-2221 requires only approval by the Department of the supervising agency which the applicant has located and plans to use. No rationale could give sense to a statute which would require the Department to locate a supervising agency after approval of the prisoner's application where one of the prerequisites to approval is the location of a supervising agency.

THEREFORE, IT IS MY OPINION:

1. A prisoner may apply for participation in the work furlough program at any time but he is not eligible for release on work furlough until he has completed half of the time required for eligibility for parole.
2. The Board of Pardons has the authority to release prisoners on furlough.
3. The Department of Institutions has final authority to approve or disapprove applications of prisoners for release on work furlough.
4. The applicant is responsible for locating an agency which will supervise his release on work furlough.

Very truly yours,

ROBERT L. WOODAHL
Attorney General